HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Petition No.11213 of 2005

And

Writ Appeal No.243 of 2006

Between:

R. Mutyalu and others … Petitioners (Appellants)

And

The State of A.P. represented by its

Principal Secretary, Revenue Department,

Hyderabad and others … Respondents

:: ORDER::

Counsel for the Petitioners/Appellants: Sri C. Hanumantha Rao

Counsel for Respondent Nos.1 to 4: Government Pleader for Revenue

Counsel for Respondent No.5: Smt.M. Venkateswari

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April 03, 2006

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Per G.S. Singhvi, CJ

Feeling aggrieved by the proceedings initiated for acquisition of their land, R. Mutyalu and 41 others filed writ petition under Article 226 of the Constitution of India with the prayer that notification dated 24-2-2005 issued by District Collector, Ranga Reddy District (respondent No.2) under Section 4 (1) of the Land Acquisition Act, 1894 (for short 'the Act') may be quashed. The same was registered as Writ Petition No.11213 of 2005. They also filed WPMP No.14381 of 2005 for restraining the respondents from dispossessing them. By an order dated 1-7-2005, the learned Single Judge directed that status quo be maintained for a period of two weeks. The term of interim order was extended from time to time.

During the pendency of the writ petition, Hyderabad Metropolitan Water Supply and Sewerage Board, Khairtabad (Hyderabad) (for short 'the Board') filed WPMP No.26086 of 2005 for its impleadment as party to the writ petition. By an order dated 23-12-2005, the court permitted the applicant to be added as respondent to the writ petition.

Thereafter, the impleaded respondent filed WVMP No.17 of 2006 for vacating interim orders dated 1-7-2005/4-10-2005 by asserting that possession of the acquired land had been taken on 15-6-2005 i.e., before the passing of interim order

dated 1-7-2005 and the land was urgently needed for construction of Sewerage Treatment Plant (STP). The writ petitioners contested the application by asserting that possession of the land was still with them. After hearing the parties, the learned Single Judge, vide his order dated 10-2-2006, allowed WVMP No.17 of 2006 and vacated the interim order dated 1-7-2005.

The writ petitioners challenged the aforementioned order in Writ Appeal No.243 of 2006. While issuing notice of the appeal on 14-3-2006, the Division Bench directed the parties to maintain status quo as it was obtaining on that date.

On 16-3-2006, learned counsel for the parties agreed that instead of deciding the appeal, the Division Bench may dispose of the main writ petition pending before the learned Single Judge. Thereupon, both the cases were ordered to be listed before the Division Bench.

Sri Hanumantha Rao, learned advocate for the petitioners/appellants argued that notification dated 24-2-2005 issued by respondent No.2 for acquisition of the land should be declared illegal and quashed because there do not exist any justification for invoking the urgency clause contained in Section 17 (4) of the Act. He submitted that before depriving the petitioners of their valuable right to property, the concerned authority is duty bound to hold enquiry in terms of Section 5-A of the Act and afford them opportunity of effective representation against the acquisition of land. Learned counsel emphasized that decision to dispense with the enquiry cannot be taken lightly and in a casual manner as it has been done in the present case because construction of STP cannot be considered to be a matter of great emergency. He then argued that the action of the respondents to take possession of the land on 15-6-2005 should be declared as nullity because of non-compliance of Section 17 (3A) of the Act. In the end, Sri Hanumantha Rao submitted that his clients are prepared to withdraw their objection to the acquisition of land if they are paid 80% compensation in terms of Section 17 (3A) and remaining compensation in accordance with the award to be passed by the Land Acquisition Officer.

Learned Government Pleader and counsel for respondent No.5 Board justified the invoking of urgency clause by arguing that construction of STP is absolutely imperative to meet the challenge posed by accumulation of waste. Learned counsel for the Board invited our attention to the affidavit of Sri V. Raja Reddy, Executive Director of the Board to show that the land is urgently needed for construction of

STP in a time-bound schedule. She submitted that if construction of STP is not completed, the amount sanctioned by the Ministry of Environment, Government of India as a part of National River Action Plan assistance will lapse and the Board will face great difficulty in completing the project. She further submitted that any delay in construction of STP would be seriously detrimental to the health of the people. She then pointed out that the Board had deposited the amount payable to the land owners and the delay, if any, in the distribution of the amount is entirely on the part of the acquiring authority.

Learned Government Pleader invited our attention to the affidavit dated 28-3-2006 of Sri L. Premchandra Reddy, Collector and District Magistrate, Ranga Reddy to show that 80% of the compensation was not paid to the petitioners because their entitlement to be treated as land owners is questionable. He then submitted that after initiation of acquisition proceedings, it came to the notice of respondent No.2 that the lands in question attracts the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the 1976 Act') and, therefore, reference was made to Special Officer, Urban Land Ceiling, Hyderabad to clarify the position. He further submitted that the competent authority has passed some order under the 1976 Act and, if compensation is paid to the petitioners at this stage, recovery thereof at a later stage will be extremely difficult.

We have given serious thought to the entire matter. We are prima facie convinced that invoking of urgency clause under Section 17 (4) by dispensing with enquiry envisaged under Section 5-A does not suffer from any patent legal infirmity. The background in which the urgency clause was invoked is discernible from the averments contained in the affidavit of
Sri V. Raja Reddy, Executive Director of the Board, paragraphs 3 to 8 of which are reproduced below:

> "3. I humbly submit that the Government has taken the decision to acquire the said lands for the purpose of construction of new STP of 30 MLD capacity for providing sewerage facilities to Malkajgiri, part of Kapra, Uppal Municipality, entire Tarnaka area and Ramanthapur. The Board has already taken up the projects for strengthening and improvement of sewerage system and decentralized sewerage treatment plant at upgrading of existing Amberpet STP, Nagole STP, Nallacheruvu STP and Attapur STP by handing over the said project to HMWS&SB. The Nallacheruvu STP Project shall be constructed and maintained by the HMWS&SB in future. But, the said orders passed by the Hon'ble Court in WPMP No.14381 of 2005 in W.P.No.11213 of

2005 has stalled the board from taking up the project work immediately.

4. I humbly submit that the lands mentioned above which are to be acquired are the ideal sites technically and hydraulically for the proposed STP. The location of the site selected as it is technically feasible for the proposed construction of STP. The writ petitioners are contending that there are other lands available for acquisition, but, the proposed lands are the appropriate lands for the construction of STP as they can avoid submergence of the units during the monsoon due to its high flood level.

5. I humbly submit that the lands under acquisition are at elevated location and as such it has been selected for the construction of STP project but not for any other purpose like depriving the rights of the petitioners. The said acquisition of lands is for public purpose especially for the benefit of the residents upto Suryapet. The HMWS & SB got prepared a Master Plan for improvement and strengthening of sewerage system for the residents of Malkajgiri, part of Kapra, Uppal Municipality, Tarnaka and Ramanthapur areas. By providing de-centralised sewerage treatment plant at 1. Upgradation of existing Amberpet STP, 2. Nagole STP, 3. Nallacheruvu STP and 4. Attapur STP and all the said STPs are taken up along with the remodeling of sewerage system. The Musi River Project under National River Action Plan (NRAP) assistance, Ministry of Environment, GOI is recently approved and sanctioned for Rs.344 crores project under which there are about 5 STPs to be taken up matching the Master Plan proposals. One of the STP which was proposed on line Nala near Nandimusalaiguda on the river bed can also be avoided if the site at Uppal Bhagat Village STP, Nallacheruvu, R.R. District is allotted to this respondent Board for the purpose of construction of STP and can create healthy environment.

6. I humbly submit that the importance of the site of Uppal Bhagat village STP, Nallacheruvu, R.R. District is that it is technically feasible to treat the incoming sewage, from Malkajgiri, part of Kapra, Uppal Municipality, Tarnaka and Ramanthapur areas. The treated sewage from Uppal Bhagat village STP will be disposed of into Musi river duly satisfying river, water quality, characteristics as per standards and also to keep the hydrology by continuous flow of treated water. If the Nallacheruvu site is allotted to this respondent Board, the Board will facilitate to treat about 30 MLD of sewage at present expected to be generated in the catchments. All the above mentioned efforts are done by the Government and by this respondent Board only with an intention to create clean and healthy environment to the residents upto Suryapet, Nalgonda District. If at all the said lands are not allotted to the Board for the construction of STP project, the Board cannot implement the projects taken up by it successfully and upto the mark.

7 . It is humbly submitted that as far as Nallacheruvu STP Project is concerned, the sewage from the north side covering Malkajgiri, part of Kapra,

Uppal Municipalities and entire Tarnaka area is draining into Nallacheruvu and causing severe pollution to the downstream of Nallacheruvu resulting in polluting the river Musi in turn polluting from twin cities to Suryapet. To prevent the said pollution, the HMWS & SB has proposed laying of 7001200/1400 mm Dia RCC Sewer Main from Lalapet to Nallacheruvu to carry the sewage and 60% of the work has been completed and the total work is expected to be completed by March, 2006. Another line of 450/600/1000 mm Dia Sewer line has been proposed to carry the sewage from Ramanthapur area which is 75% completed and is expected to be completed by March 2006.

8. It is humbly submitted that the lateral sewers to join the main sewers taken by Uppal and Kapra Municipalities are completed and the lateral sewers in Tarnaka area are also completed. The Government of India has also expressed its dis-satisfaction vide its letter dated 28-11-2005 in regard to the delay caused in completion of Nallahceruvu Project. Actually the Board has proposed to acquire 33.34 gts. For construction of Nallacheruvu STP Project for the control of pollution, but, the Board has excluded Ac.3-26 gts. Land in Sy.Nos.105, 106, 107, 112, 113, 114 and 115 as there is a temple for construction in the said survey numbers. There are also two other temples which are away from the acquired lands. The said project is a time bound project and has to be completed by 2007 or else the funds released by the Govt. of India shall lapse causing irreparable damage not only to the Board but to the public upto Suryapet, Nalgonda District."

In our view, construction of STP is required to be completed on war-footing. Else, the public at large would suffer adversely and there will be a great threat of pollution caused due to overflow of sewerage and lack of provision for treating the same.

We may have finally pronounced on the legality of notification dated 24-2-2005, but do not consider it necessary to do so because, as mentioned above, learned counsel for the petitioners gave out that his clients have agreed to give up their challenge to the notification subject to the payment of 80% compensation in terms of Section 17 (3A) and the remaining amount in accordance with the award to be passed by the Land Acquisition Officer.

The question which remains to be considered is whether respondent Nos.2 and 3 are justified in withholding the payment of 80% compensation out of the money already deposited by the Board. In paragraph 5 of his affidavit, Sri L. Premachandra Reddy, Collector and District Magistrate, Ranga Reddy District has candidly admitted that Section 17 (3A) mandates the payment of 80% compensation at the time of taking over advance possession of the land, but has tried to justify the non-

payment of amount to the petitioners by stating that the land under acquisition attracts the provisions of the 1976 Act. This assertion of the officer is quite intriguing. If the land possessed by the petitioners is part of the surplus area, as is sought to be indirectly projected in the affidavit of Sri L. Premachandra Reddy, it is impossible to comprehend as to why the officer concerned did not examine this aspect before issuing notification under Section 4 (1) of the Act. It is also inexplicable as to why the proceedings, if any, initiated after commencement of the 1976 Act were not finalized till the stage reached for payment of compensation to the petitioners in furtherance of the impugned notification. The learned Government Pleader tried to explain the delay of almost 30 years in the finalization of the proceedings under the 1976 Act by stating that an order has now been passed by the competent authority, but we have not felt persuaded to approve this unwarranted smart move made by respondent No.2 and other public authorities to deprive the petitioners of their legitimate right to receive compensation in terms of Section 17 (3A). In our view, before issuing notification under Section 4 (1), the officers concerned should have been careful and vigilant enough to first decide whether the land sought to be acquired for construction of STP is a private land or government land. At this belated stage, they cannot be permitted to create evidence by passing of some order under the 1976 Act with the sole object of depriving the petitioners, whose names figured in notification dated 24-2-2005, of their legitimate right to receive compensation in terms of Section 17 (3A).

In the result, Writ Petition No.11213 of 2005 is disposed of in the following terms:

1. The petitioners' challenge to notification dated 24-2-2005 issued by respondent No.2 under Section 4 (1) read with Section 17 (4) of the Act is negatived.

2. Respondent Nos.2 and 3 shall pay 80% of the compensation deposited by the Board to the petitioners within a period of two weeks from the receipt of a copy of this order. The payment of compensation to the petitioners shall be subject to the finalization of Urban Land Ceiling proceedings pending under the 1976 Act.

3. The petitioners shall be free to raise all legally permissible objections against the proceedings, if any, initiated under the 1976 Act and also challenge the order, if any, passed by the competent authority.

4. If the proceedings initiated under the 1976 Act are decided in favour of the petitioners, then respondent Nos.2 and 3 shall have to pay the remaining amount of compensation, which may be determined by the Land Acquisition Officer.

5. Once 80% compensation is paid to the petitioners, the possession taken by the official respondents on
15-6-2005 shall stand regularized. Thereafter, the Board shall be free to utilize the land for construction of STP.

As a sequel to the disposal of the main writ petition, Writ Appeal No. 243 of 2006 filed by the petitioners against order dated 10-2-2006 passed by the learned Single Judge in WVMP No.17 of 2006 is disposed of as infructuous. The parties are left to bear their own costs.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

April 03, 2006

svs